To Messrs. J. R. Williams and J. M. Hamill,

Solicitors for Respondents:

Please take notice that on Monday, the 5th day of August, A. D. 1901, at 12 o'clock noon, or as soon thereafter as counsel can be heard, the undersigned will submit to the Supreme Court of the United States, a petition for a Writ of Certiorari, of which the foregoing is a true and complete copy.

.....

Solicitor for Harriet M. Zane,

Petitioner.

Dated, May 18, 1901.

Service of the foregoing Notice and Petition is hereby acknowledged, this —— day of May, A. D. 1901.

.....

.....

Solicitors for Respondent.

Office 115

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Brief of Sanders for Petitioner.

Office Supreme Court U. S.
FILED
JAMES H. McKENNEY,
Clerk.

Filed June 10, 1901.

SUPREME COURT

OF THE

UNITED STATES.

October Term, A. D. 1901.

HARRIET M. ZANE,
Plaintiff in Error,
vs.
THE COUNTY OF HAMILTON, ILLINOIS,
Defendant in Error.

Brief in support of Application for Writ of Certiorari.

[redacted]

BRIEF ON BEHALF OF PETITIONER.

GEORGE A. SANDERS,
Attorney for Petitioner.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, A. D. 1901.

HARRIET M. ZANE,
Plaintiff in Error,
vs.
THE COUNTY OF HAMILTON, ILLINOIS,
Defendant in Error.

Brief in support of Application for Writ of Certiorari.

BRIEF OF PETITIONER.

STATEMENT OF THE CASE.

This is an action to recover on bonds and coupons issued by the defendant, Hamilton County, Illinois, in part payment of a subscription to the stock of the St. Louis & Southeastern Railroad Company as mentioned in the declaration.

The declaration is in the usual form, to which the defendant filed a general demurrer. Upon a hearing of the demurrer, the Court sustained the demurrer and gave judgment for the defendant for costs. The plaintiff elected to stand by her declaration and took a writ of error to the United States Circuit Court of Appeals for the Seventh Circuit.

The demurrer admits the facts as stated in the declaration; but denies the right of the plaintiff to recover under the law applicable to the case.

The facts are sufficiently stated in the declaration following the assignment of errors.

The question involved is simply whether there was legislative authority for the issue of the bonds and coupons in the case and mentioned in the declaration.

ASSIGNMENT OF ERRORS.

And now comes the plaintiff, by her attorney, George A. Sanders, and says that there are manifest errors in the record and proceedings in the above entitled cause in this:

First. The Court erred in sustaining defendant's demurrer to plaintiff's declaration and giving judgment for defendant on the demurrer for costs.

The plaintiff in this case elected to stand by her declaration, which is in the words and figures following, to-wit:

DECLARATION.

Harriet M. Zane, a resident and citizen of Boston, State of Massachusetts, plaintiff in this suit, by George A. Sanders, her attorney, complains of the County of Hamilton, in the

State of Illinois, a public corporation, organized and existing under and by virtue of the laws of the State of Illinois, a citizen of said State, resident of the Southern District of Illinois, defendant in this suit, who has been summoned, etc., to answer the plaintiff in a plea of trespass on the case on promises.

For that whereas the defendant heretofore, at the county seat of Hamilton County, in the district aforesaid, at the court house in McLeansboro, made, executed and delivered by S. B. Stelle, then County Judge of Hamilton County, Illinois, and J. W. Marshall, then clerk of the County Court of said county, among others its six (6) county bonds, numbered 45, 46, 47, 48, 49 and 50, commonly called railroad aid bonds, for $1,000.00 each, bearing interest at the rate of seven per cent per annum, evidenced by coupon interest notes of $35.00 each, due and payable on the first days of January and July of each year.

That said bonds were dated Oct. 23, 1871, and issued to the St. Louis & Southeastern Railway Company, or bearer, and were payable in the city and State of New York, twenty years after date, payable at any time before they become due after five years, with interest at the rate of seven per cent per annum, payable semi-annually on the first days of January and July of each year where the State Treasurer of the State of Illinois pays the interest and debt of said State, in the City of New York. Said bonds were registered by the Auditor of the State of Illinois, Nov. 1, 1871, with coupons attached evidencing the interest, so made, executed and deliv-

ered, payable to the St. Louis & Southeastern Railway Company, or bearer, and were exact copies of each other, except as to their serial numbers. The bond No. 46 issued with the other five bonds named as aforesaid, being in the words and figures following, to-wit:

UNITED STATES OF AMERICA.

No. 46. BOND OF $1,000.00.

HAMILTON COUNTY.

Interest seven per cent. Payable semi-annually.

STATE OF ILLINOIS.

Know all men by these presents, that the County of Hamilton, in the State of Illinois, acknowledges itself indebted and firmly bound to the St. Louis & Southeastern Railway Company, or bearer, in the sum of One Thousand Dollars, lawful money of the United States of America, which sum said county for value received, promises to pay the said Company, or bearer, in the City and State of New York, twenty years after date, payable at any time before this bond becomes due after five years at the pleasure of said County of Hamilton, with interest thereon, from the date hereof at the rate of seven per cent per annum, payable semi-annually on the first days of January and July in each year, on the presentation and surrender, at the place in said City of New York, where the Treasurer of the State of Illinois pays the interest and debt of said State, of the coupons hereto attached as they severally become due.

This bond is one of two hundred of like tenor and amount, of same issue, and it is issued under and by virtue of the authority given by a majority of all the legal voters in said County, by their votes, at an election held in said County, pursuant to law, on the third day of November, A. D. 1868, and also by the authority given by the provisions of an act of the General Assembly of the State of Illinois, in force March 10, A. D. 1869, entitled "An act to incorporate the St. Louis & Southeastern Railway Company."

This bond is also issued under the provisions of an act of the General Assembly of the State of Illinois, in force April 16, A. D. 1869, entitled, "An act to fund and provide for the payment of the Railroad debts of Counties, Townships, Cities and Towns."

This bond is issued in part payment of a subscription made by said County, under and by virtue of the authority aforesaid, to the capital stock of the said St. Louis & Southeastern Railway Company, in the sum of Two Hundred Thousand Dollars.

IN TESTIMONY WHEREOF, the said County of Hamilton has executed this Bond, by the County Judge of said County under the order of the County Court of said County, signing his name hereto, in open Court, and by the Clerk of said Court, in obedience to the order thereof, attesting the same and affixing hereto the seal of the said Court, in open Court.

Done at the Court House at McLeansboro,
[Seal] in said County, on this, the 23d day of October, Anno Domini 1871.

T. B. STELLE,
County Judge of Hamilton County, Ill.

Attest:

J. W. MARSHALL,

Clerk the County Court of Hamilton County, Ill.

ENDORSED.

AUDITOR'S OFFICE, ILLINOIS.

Springfield, Nov. 1, 1871.

I, Charles E. Lippincott, Auditor of Public Accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled, "An act to fund and provide for the paying the railroad debts of Counties, Townships, Cities and Towns," in force April 16, 1869.

In Testimony Whereof, I have hereunto

[Seal] subscribed my name, and affixed the seal of my office, the day and year aforesaid.

C. E. LIPPINCOTT,

Auditor of P. A.

And the plaintiff avers that each of her six bonds has attached nine (9) coupons, or interest warrants A. $35.00 each, series 31 and 40 inclusive, dated Oct. 23, 1871, representing the interest on each of said bonds at the rate of seven per cent per annum and payable in the city of New York, exact copies of each other save as to the number of the bonds to which they are attached, their serial numbers and the dates when they become due.

Coupon serial No. 40, on bond No. 46, due 1892, in the words and figures following, to-wit:

"$35.00. $35.00.

McLeansboro, Hamilton County, Illinois.

January 1st, 1872.

The County of Hamilton, in the State of Illinois, promises to pay the sum of Thirty-five Dollars on the first day of January, 1892, lawful money of the United States of America, being six months' interest on Bond No. 46 for One Thousand Dollars, issued on subscription to the St. Louis & Southeastern Railway Company.

This coupon is payable in the City of New York.

J. W. MARSHALL, Clerk."

Plaintiff avers that said bonds are a part of an issue of two hundred of like tenor and amount save as to dates of issue and registration and numbers of bonds as aforesaid, under and by virtue of the authority given by the provisions of an act of the General Assembly of the State of Illinois, in force March 10, 1869, incorporating the St. Louis & Southeastern Railway Company, and of a vote of a majority of the legal voters in said county at an election held *pursuant to law* November 3, 1868, and also by virtue of the provisions of an act of the General Assembly of the State of Illinois, in force April 16, 1869, entitled, "An act to fund and provide for the payment of the railroad debts of Counties, Townships, Cities and Towns." And that said six (6) bonds were duly registered by the State Auditor as aforesaid, November 1, 1871, under the act of April 16, 1869.

Plaintiff further avers that said six (6) bonds and the coupons thereto attached were purchased by her for an investment in the usual course of business for a good and valuable consideration, somewhere on or about February 1, 1874, and long before there was any default in the payment of the interest or principal of said bonds and without any notice whatever of any supposed want of legislative power or irregularity in their issue.

By means whereof, and by force of the statute in such cases made and provided, said defendant became liable to pay said plaintiff said sums of money in said bonds and coupons or interest warrants specified according to the tenor and effect of the said coupons and bonds, and being so liable said defendant in consideration thereof, afterwards, to-wit: on the same day and year last aforesaid, and at the county and district aforesaid, undertook then and there and faithfully promised the said plaintiff, well and truly to pay unto said plaintiff the said sums of money, and interest thereon as specified in the bonds and coupons, or interest warrants, according to their tenor and effect.

For that whereas the said defendant on the first day of October in the year of Our Lord 1898, at the county and district last aforesaid, was indebted to the plaintiff in the sum of twenty thousand dollars ($20,000) of like lawful money as aforesaid, for money before that time lent and advanced by said plaintiff to the said defendant; and at a like request of said defendant before that time paid out and expended for the said defendant; and at a like request of the defendant and for

money by said defendant before that time had and received, due and for use of said defendant; and being so indebted said defendant in consideration thereof, afterwards, to-wit: on the same day and year and at the same place aforesaid, undertook and faithfully promised said plaintiff well and truly to pay the said plaintiff the sums of money in this count mentioned.

And whereas, also, the defendant afterwards, to-wit: upon the same day and year, and at the County and District last aforesaid, accounted, together with the said plaintiff, of and concerning divers other sums of money before that time due and owing from the defendant to said plaintiff then and there being in arrears and unpaid, and upon such accounting said defendant then and there was found in arrears, and in debt to the plaintiff in the further and other sum of twenty thousand dollars ($20,000), lawful money as aforesaid, and being so found in arrears and indebted to the plaintiff, the defendant, in consideration thereof, afterwards, to-wit: on the same day and year and at the same place aforesaid, undertook and then and there faithfully promised to pay the said plaintiff the said sum of money last above mentioned, when the said defendant should be thereunto afterwards requested.

Nevertheless the said defendant, although often requested, has not paid the several sums of money above mentioned, or any or either of them, or any part thereof to the said plaintiff, but the defendant has hitherto altogether refused and still does refuse to the damages of said plaintiff of twenty thousand

dollars ($20,000) and therefore said plaintiff brings this, her suit, etc.

(Signed) GEORGE A. SANDERS,
Plaintiff's Attorney.

The County of Hamilton,
State of Illinois.

To Harriet M. Zane, Dr.—

To goods, wares and merchandise sold and delivered. $20,000
To money lent and advanced..... 20,000
To money paid out and expended..... 20,000
To money had and received..... 20,000
To balance due on account..... 20,000
To interest forborne due plaintiff..... 20,000

A general demurrer to plaintiff's declaration was filed, as follows, to-wit:

United States of America, } ss.
Southern District of Illinois. }

IN THE UNITED STATES CIRCUIT COURT.
JANUARY TERM, A. D. 1899.

Harriet M. Zane
vs.
County of Hamilton,

And the said defendant, by J. R. Williams and J. M. Hamill, its attorneys, comes and says that the declaration in said cause is not sufficient in law.

(Signed.)
J. R. WILLIAMS and J. M. HAMILL,
Attorneys for Defendant.

Declaration endorsed as follows:

No. 8545, Circuit Court, January Term, A. D. 1899.

Harriet M. Zane, Plaintiff,

vs.

The County of Hamilton, Defendant.

DECLARATION.

Filed November 7, 1898.

James T. Jones, Clerk.

Demurrer to the declaration endorsed.

Harriet M. Zane
vs.
County of Hamilton. } Demurrer to Declaration.

Filed January 6, 1899.

James T. Jones, Clerk.

Second: The Court erred in not overruling the general demurrer of defendant to plaintiff's declaration and in giving judgment for defendant for costs.

The demurrer admits the facts as stated in the declaration but denies that under the law applicable to the case, the plaintiff has a right to recover on the instruments mentioned in the declaration.

The declaration states that the defendant by its then County Judge, S. B. Stelle, and its then County Clerk, J. W. Marshall, at its Court House in McLeansboro, in the county seat of defendant, Hamilton County, Illinois, did make, execute and deliver among other, its six (6) county bonds numbered 45, 46, 47, 48, 49 and 50, commonly called railroad aid

bonds, for $1,000 each, bearing interest at the rate of seven per cent per annum evidenced by coupon interest notes of $35.00 each and payable January and July of each year.

That said bonds were dated October 23, 1871, and issued to the St. Louis & Southeastern Railway Company, or bearer, and were payable in the City and State of New York, twenty years from date or at any time after five years at the option of the County, with seven per cent interest, January and July first of each year, where the State Treasurer of the State of Illinois pays the interest and debt of said State in the City of New York. That the said bonds were registered by the then State Auditor November 1, 1871, as will fully appear by copy of a bond, No. 46, supra.

That said bonds were a part of an issue of two hundred of like tenor and amount and issued under and by virtue of the authority given by a majority of all the legal voters of said County, by their votes, at an election held in said County, pursuant to law, on the 3d day of November, 1868, and also by authority given by the provisions of an act of the General Assembly of the State of Illinois, in force March 10, 1869, entitled, "An act to incorporate the St. Louis & Southeastern Railway Company."

The bonds were also issued under the provisions of an act of the General Assembly of the State of Illinois, in force April 16, 1869, entitled, "An act to fund and provide for the payment of railroad debts of Counties, Townships, Cities and Towns," and were issued in part payment of a subscription made by said County, under and by virtue of the authority

aforesaid to the capital stock of said St. Louis & Southeastern Railway Company in the sum of two hundred thousand dollars ($200,000).

Plaintiff averred that she purchased the six bonds and coupons mentioned in the declaration as an investment in the usual course of business, for a good and valuable consideration long before there was any default in the payment of the interest or principal of said bonds and without any notice whatever of any supposed want of legislative power or irregularity in their issue.

The above facts averred in the declaration are all admitted by the demurrer and make the plaintiff a bona fide holder and owner of the bonds and coupons mentioned in the declaration.

"*An act to incorporate the St. Louis & Southeastern Railroad Company.*" In force March 10, 1869, granting authority for the issue of the bonds.

Pages 239-245, Private Laws, State of Illinois, Vol. 3, 1869.

Sec. 15. The several counties in which any part of said railway may be hereafter located, or that may lie on or near the line of the railway, and the several townships in such counties which have adopted or may hereafter adopt township organization and the cities and incorporated towns in the said counties, are hereby authorized to subscribe and take stock in said company upon the application of said company, for such an amount as they may think proper, payable in bonds, lands and right-of-way, and subject to such agreements and stipulations as to the route of said railway, the time of delivery and payment of the bonds, as may be agreed upon: Pro-

vided, that no subscriptions shall be made by any County Court nor by the legal authorities of an incorporated city or town or township, until after the question of such subscription shall have been submitted, by order of the County Court or other legal authorities of said city, town or township to the legal voters thereof, at a general or special election to be called, conducted and returns made, canvassed, and published in the usual manner of conducting elections in said county, incorporated city or town or township. All such notices shall state the amount of such subscription that would be submitted at such election; at which election each voter shall vote a ticket, opon which is printed or written "For Subscription," or "Against Subscription," and if a majority of the ballots cast at such election shall be "For Subscription," it shall be the duty of the County Court or the legal authorities of such incorporated city, town or township, to subscribe the amount stated in the order of election to the stockholders of said company.

Sec. 16. Elections may be held in any such county, incorporated city or town or township upon the question whether such county, city, town or township shall subscribe for any specified amount of the capital stock of said railway company whenever a petition shall be presented, as hereinafter described; and as often as may be required by petitioners, whenever a petition shall be presented to the County Clerk, signed by fifty legal voters of any such county, setting forth the amount of stock to be taken by such county and specifying the time for holding such an election, it shall be the duty

of the County Clerk of any such county to give thirty days' notice of the time for holding such election, which time shall be the same as that specified in said petition; and whenever a petition shall be presented to the supervisor of any such township, or to the corporate authorities of any such city or town, signed by twenty-five legal voters of any such township, city or town, setting forth the amount of the stock proposed to be taken by any such township, city or town and specifying the time for holding such election, it shall be the duty of the Supervisor of every such township and the duty of the Clerk of every such city or town to give thirty days' notice of the time of holding such election in such township, city or town, which time shall be the same as that specified in such petition; and all such notices shall be given in the same manner, and such election shall be conducted and returns made, canvassed and published in the same way and at the places provided for holding general elections in such counties, townships, cities and towns; at which elections the qualified voters of the respective counties, townships, cities and towns shall vote "For Subscription," or "Against Subscription," and if a majority of the votes cast at such election, by voters voting on that subject, shall be "For Subscription," it shall be the duty of the County Court or Board of Supervisors of every such county, the Supervisor and Clerk of such township and the corporate authorities of such city or town to subscribe, at once, upon the request of the directors or corporators of said company, the same amount so voted for, and to issue and deliver to said company the same amount as the

stock so subscribed of the bonds of such county, township, city or town, as the case may be, payable at any time specified, not exceeding twenty years from date, or sooner at the option of the county, township, city or town issuing the same, with interest coupons attached to the same, at a rate not exceeding eight per cent, payable annually or semi-annually; which said bonds shall be of such denomination and the principal and interest payable at such place or places, either within or without the State, as may be agreed upon: Provided, that at any election held under the provisions of this act at any other time than the time for holding general elections for State and County purposes, it shall not be necessary for the several Boards of Registry to make a register of the several voting precincts, but the register made of the legal voters at the last general election held for the election of State and County officers, may be used: And, provided, that the vote of any legal voter, whose name does not appear on the said register, shall be received and taken in the same manner that unregistered legal voters' (votes) are taken at any general election.

Sec. 17. Any incorporated city, town or township, or any county, through or near, which the said railroad shall run, is hereby authorized to donate and give, as a bonus to the said railway company, any amount they may deem proper, upon such terms and conditions as may be agreed upon by and between said city, town or township or county, and the said railway company, to secure the building of said railway: Provided, that the authorities of said city, town, township or

county shall submit the question whether such donation or bonus shall be given, to the legal voters thereof, at a regular or special election, held after at least thirty days' notice, and conducted, canvassed and returns made in the usual manner and places, the amount proposed to be donated being stated in the order for such election, and the tickets voted at such election shall have written or printed on them "For Donation" or "Against Donation," and if at such election the majority of the legal votes cast shall be in favor of such donation, it shall be the duty of the proper authorities of such city, town, township or county to provide for the payment of such donation or bonus. And to provide the means for the payment of any such sum as may be given or agreed to be given, in pursuance of the provisions of this act, the said city, town, township or county shall issue bonds to said railroad company, in sums of not less than one hundred dollars each, bearing interest at any rate not exceeding eight per cent per annum, and payable at such times and places, either within or without this State, as may be agreed upon; which bonds may run for any period not exceeding twenty years.

Sec. 18. It shall be the duty of the respective authorities of the several counties, townships, cities and towns which may make such subscriptions and donations, and they are hereby required, to levy and collect a sufficient special tax on all the taxable property, both real and personal, in such counties, townships, cities and towns, to pay the interest, annually and semi-annually, accruing on such bonds, and to discharge the principal and interest, respectively, thereof.

Sec. 20. And the said Company may lease or purchase upon such terms as may be agreed upon, any other railroad or parts of railroad, either wholly or partially constructed, which may constitute or be adopted as part of their main line; and, by such lease or purchase, they shall acquire and become vested with all the rights and franchises pertaining to said road, or part of road, in the right-of-way, construction, maintenance and working thereof. And the County Court of Gallatin County is hereby authorized and empowered to subscribe to the capital stock of this Company the one hundred thousand dollars, or any part thereof, heretofore voted by a majority of the legal voters of said County to the Shawneetown Branch of the Illinois Central Railroad Company. *And the County Court of Hamilton County is hereby authorized and empowered to subscribe to the capital stock of this Company the two hundred thousand dollars, or any part thereof, heretofore voted by a majority of the legal voters of said County to the Shawneetown Branch of the Illinois Central Railroad Company.* And the County Court of Jefferson County is hereby authorized and empowered to subscribe to the capital stock of this Company the one hundred thousand dollars or any part thereof, voted by a majority of the legal voters of said county to the Mount Vernon Railroad Company. And it shall not be necessary to submit the question of making the several subscriptions in this section mentioned to the vote of the legal voters of said respective counties: Provided, that nothing herein shall be so construed as to prevent either of the counties mentioned in this section, subscribing any other or larger

amounts to the capital stock of this Company than the amounts mentioned in this section.

Sec. 21. This Act shall be deemed a public act and shall be liberally construed for all purposes therein expressed and declared, and shall be in force from and after its passage.

Approved March 10, 1869.

Third. The Court erred in not holding the Act of March 10, 1869, constitutional, and in not rendering judgment for the plaintiff for the amount due on her bonds and coupons as mentioned in the declaration.

POINTS AND ARGUMENT.

There was ample legislative authority for the issue of the bonds and coupons in controversy, under the Act of March 10, 1869. The declaration avers the citizenship of the plaintiff as that of another state. Gives copy of one of the bonds and coupons, and avers the others are of similar tenor and effect, states when, and for what purpose, the bonds were issued, rate of interest, and when and where payable. That they were made, executed and delivered by the duly authorized officials of the defendant county in part payment of a subscription for stock of the St. Louis & Southeastern Railway Company, to that Company, or bearer, under and by virtue of the authority of a majority of all the legal voters in said County, by their votes at an election held in said county, *pursuant to law*, on the 3d day of November, 1868, and also by the authority given by the provisions of an act of the General Assembly of the State of Illinois, in force March 10, A. D. 1869, entitled "An Act to in-

corporate the St. Louis & Southeastern Railway Company," and under the provisions of an Act of the General Assembly of the State of Illinois in force April 16, A. D. 1869, entitled "An Act to fund and provide for the payment of the railroad debts of cities, counties, townships and towns."

That they were issued in part payment of a subscription made by said county under and by virtue of the authority aforesaid to the capital stock of said St. Louis & Southeastern Railway Company, the whole subscription of the County being $200,000.

That the bonds were duly registered by the State Auditor November 1, 1871, under the Act of April 16, 1869.

That the plaintiff purchased the bonds and coupons for an investment in the usual course of business for a good and valuable consideration somewhere on or about February 1, 1874, and long before there was any default in the payment of the interest or principal of the bonds and without any notice whatever of any supposed want of legislative power, or irregularity in their issue.

The recitals on the bond are as follows: "This bond is one of two hundred of like tenor and amount, of same issue, and is issued under and by virtue of the authority given by a majority of all the legal voters in said County by their votes at an election held in said county *pursuant to law* on the 3d day of November, A. D. 1868, and also by the authority given by the provisions of an Act of the General Assembly of the State of Illinois in force March 10, 1869, entitled "An Act to incorporate the St. Louis & Southeastern Railway Company."

"This bond is also issued under the provisions of an Act of the General Assembly of Illinois in force April 16, A. D. 1869, entitled "An Act to fund and provide for the payment of railroad debts of cities, towns, townships and counties."

"The bond is issued in part payment of a subscription made by said county under and by virtue of the authority aforesaid to the capital stock of the said St. Louis & Southeastern Railway Company in the sum of Two Hundred Thousand Dollars."

All the facts averred in the declaration are admitted by the general demurrer and the bonds and coupons must be held valid obligations of the defendant if there was legislative authority for their issue.

It is now held by the Federal and State Courts that no legislative authority to issue bonds is conferred upon public corporations by the Registration Act of April 16, 1869.

This being conceded, we think there is ample legislative authority for the issue of the bonds in the Act to incorporate the St. Louis & Southeastern Railway Company, in force March 10, 1869, copied under assignment of errors, supra.

Sections 15, 16 and 17 are full and explicit as to terms of subscription to the stock of the Railroad Company, terms of issue and payment of the bonds and when and how elections are to be called and held to vote for the subscription to the stock and the issue of the bonds in payment thereof.

But Section 20 of said Act gives *express authority* so to do in the following language: "And the said Company may lease or purchase upon such terms as may be agreed upon, any other railroad or part of railroad, either wholly or partially

constructed, which may constitute or be adopted as part of their line; and by such lease or purchase, they shall acquire and become vested with all the rights and franchises pertaining to said road or part of road in the right-of-way, construction, maintenance, and working thereof. And the County Court of Gallatin County is hereby authorized and empowered to subscribe to the capital stock of this Company the One Hundred Thousand Dollars or any part thereof heretofore voted by a majority of the legal voters of said County to the Shawneetown branch of the Illinois Central Railroad Company. And *the County Court of Hamilton County is hereby authorized and empowered to subscribe to the capital stock of this Company the Two Hundred Thousand Dollars, or any part thereof heretofore voted by a majority of the legal voters of said County to the Shawneetown branch of the Illinois Central Railroad Company.* And the County Court of Jefferson County is hereby authorized and empowered to subscribe to the capital stock of this Company, the One Hundred Thousand Dollars or any part thereof voted by a majority of the legal voters of said County to the Mount Vernon Railroad Company."

"And it shall not be necessary to submit the question of making the several subscriptions in this section mentioned to the vote of the legal voters of said respective counties: Provided, that nothing herein shall be so construed as to prevent either of the Counties mentioned in this section subscribing any other or larger amounts to the capital stock of this Company than the amount mentioned in this section.

"This act shall be deemed *a Public Act* and shall be liber-

ally construed for all purposes therein expressed and declared and shall be in force from and after its passage.

Approved March 10, 1869."

We think there can be no doubt that there is ample legislative power in the Act of Incorporation of the St. Louis & Southeastern Railroad Company for the issue of the bonds in question and especially under Section 20 in that Act. This construction has been given to this Act in a number of cases.

II.

Act of incorporation of March 10, 1869, not in violation of the Constitution of 1848. Counsel for the defendant strenuously insists that the Act has been held in violation of Section 23, Article 3, of the Illinois Constitution of 1848, which provides that "*no private or local law which may be passed by the General Assembly shall embrace more than one subject and that shall be expressed in the title.*"

Constitution of Illinois of 1848, Sec. 23, Article 3. See Revised Statutes of Ill., Hurd, 1897, page 39.

The first adjudication concerning this issue of bonds was in a chancery proceeding commenced by the County of Hamilton to restrain and enjoin the levy and collection of taxes to pay interest on these bonds. That case was removed to the Federal Court of the Southern District of Illinois by Walter Jackson, who filed a cross bill and upon a hearing of the bill and cross bill, Jackson's bonds 105 as numbered in his cross bill, were held "valid, legal and binding obligations of the said County." The original bill was dismissed at the cost of the

complainaint and this decree, dated June 5, A. D. 1881, was never appealed from, reversed, or in any manner set aside or annulled.

Then on June 16, 1888, a decision in an *ex parte* proceeding (unknown bondholders being served only by newspaper publication) was rendered by the State Supreme Court in the case of the People vs. Hamill, 134 Ill., 666, holding this issue of $200,000 of bonds void for want of legislative power to issue them. That the Act of March 10, 1869, was in violation of Sec. 23, Article 3 of the Constitution of 1848, and therefore conferred no power for their issue.

On October 5, 1896, the United States Circuit Court of Appeals rendered a decision in the case of Austin vs. Hamilton County, 22 C. C. A. 128, 79 Fed. 208, in which other bonds and coupons of this issue, than those mentioned in the decree of June 5, 1881, were involved.

That Court, as we understand that decision, affirmed the decision of the Court below on the ground that the plaintiff *was not a bona fide holder of some of the bonds and coupons* involved, having presumably purchased them after a knowledge of the decision of the State Supreme Court in the case of The People vs. Hamill, 134 Ill., 666.

As to the question whether the Act of Incorporation of the Railroad Company of March 10, 1869, granted the power because the section expressly granting power to defendant county was not embraced in the title and was not germane to the subject of the Act in which it is found, the Appellate Court says, in the Austin case 22, C. C. A., page 131, latter

part, "But as between the County, which brought the suit, and Jackson, who, after being allowed to intervene, was made a defendant by name and not only answered denying the allegations of the bill; but filed a cross bill affirming the validity of the bonds. *There can be no question that the decree is conclusive*, and that the plaintiff, as assignee of Jackson, was entitled to the judgment awarded him. To that extent the case is essentially the same as that adjudged in that Franklin Co. vs. German Savings Bank, 142 U. S., 99. 12 Sup. Ct. 147. Here, as there, the validity of the bonds was put directly in issue by the pleadings and was determined adversely to the County. Here, it is true, the findings say: That the constitution of Section 20 of the Act of Incorporation of the Railroad Company "was not drawn in question, passed upon, or decided" in the chancery cause, *but that is a mistaken conclusion of law, rather than a finding of fact*, under the issues joined, both upon the bill and the cross bill, the validity and force of that section, equally with any other enactment referred to in the recitals of the bonds, were *necessarily within the scope of inquiry, whether actually considered or not, and therefore were determined by the decree, in which, according to the finding, Jackson's bonds were specified by number and all declared valid. The question of the validity of these bonds is not open to reconsideration.*"

As we understand the decision of this Court cited supra it is that the decision of the decree must stand and that the Act of March 10, 1869, incorporating the Railroad Company is *not repugnant* to the Constitution of 1848. Both the title

to the Act and Section 20 granting express power to issue the bonds *must have been or might have been construed by the Court* in the decree, and as this Court say: *"Were determined by the decree."*

The leading question determined by the State Supreme Court in People vs. Hamill, *supra*, was whether the Act of March 10, 1869, incorporating the Railroad Company, granting power to issue the bonds was in violation of the Constitution of 1848. The decree of the Federal Court of June 5, A. D. 1881, *holds that it was not.* The Appellate Court, as we understand in the citations, *supra, affirms that decision, and sustains the decree*, when it says, that question equally with others "were determined by the decree."

All the Federal decisions in four cases have held Jackson's bonds valid. His bonds being valid, all other bonds of the same issue of $200,000 issued at the same time, by the same officers, of the same tenor and effect, for the same purpose, by virtue of the same vote of the people, and under the same Act of March 10, 1869, *must be valid as far as legislative authority to issue them is concerned.* Since the Constitutional question applies to all bonds of the whole issue, and if the Act of March 10, 1869, is not in violation of the Constitution of 1848, as to Jackson's bonds, it cannot be so as to any of the other bonds of the same issue.

The case of Austin vs. Hamilton County, *supra*, is not therefore *res adjudicata*, as to the case at bar, as is claimed by the counsel for the defense, since the only question involved under the demurrer is the constitutionality of the Act of March 10, 1869.

Counsel for the defense insist that the decision in the case of Bolles et al. vs. Hamilton County, 20 C. C. A. 401, is *res adjudicata* as to the case at bar. An examination of the case will show that the counsel's position is untenable. For the Appellate Court say: "There is no special finding of facts, and in other respects also the record is the same as in the case of Woodbury vs. City of Shawneetown, 20 C. C. A. 400, 74 Fed. 205, *for reasons there explained no question is presented for consideration.*"

In the Woodbury vs. City of Shawneetown case, *supra*, the Appellate Court held that there being *no special findings of fact, only a general finding*, "No question is presented upon any action or ruling of the Court in the progress of the trial of the cause and the finding not being special, *there is presented here no question of the sufficiency of the facts found to support the judgment.*" And that the bill of exceptions does not purport to contain *all* the evidence and while it sets out matter of record and other facts as having been agreed upon, it does not show *all* the facts are stipulated nor that the case is submitted upon the facts stated as "an agreed case."

The parties to those cases are different from the parties in the case at bar and we cannot believe that a decision of a Court of last resort on questions of practice can be *res adjudicata* as to the case at bar when the Court says in the decision, "*No question is presented for consideration.*"

As we understand these decisions the Appellate Court never passed upon the only question presented under the demurrer in the case at bar, to-wit: the constitutionality of the

Act of March 10, 1869, save in the Austin vs. Hamilton County case where it sustains the decree of the Federal Court below of June 5, 1881, when it says, this question equally with others "were determined by the decree."

III.

Counsel for the defense insists that there was no law granting any power whatever to issue the bonds in controversy in existence when the vote was taken.

There is now no question, under the decisions of the Federal Courts but that the Legislature had power to *ratify, confirm and legalize the exercise of any power by public corporations*, which it might have authorized in the first instance.

"The Legislature in the enabling Act of March 10th, 1869, simply gave effect to the wishes of the people, as expressed in the customary mode for ascertaining the popular will," says the United States Supreme Court in Bolles vs. Brimfield, 120 U. S., 759 and 764, October Term, 1886, Illinois case. The same doctrine is sustained in Anderson vs. Santa Anna, 116 U. S., 364 and citation. Illinois case.

In Grenada County vs. Brogden, 112 U. S., 271, the Court says: "Since what was done in this case by the constitutional majority of qualified electors and by the Board of Supervisors of the County would have been legal and binding upon the County had it been done under legislative authority previously conferred, it is not conceived why subsequent legislative ratification is not, in the absence of constitutional restrictions, upon such legislation, equivalent to original authority. Citations.

IV.

The Act of March 10th, 1869, incorporating the St. Louis & Southeastern Railroad Company not unconstitutional by reason of its title; nor is it a local or private act.

Section 23, of Article 3, of the Constitution of 1848 provides that "*No private or local law, which may be passed by the General Assembly, shall embrace more than one subject, and that shall be expressed in the title.*"

Illinois Revised Statutes, Hurd's 1897, Article 3, Section 23, page 39.

The ex parte decision by the Supreme Court of the State in the People vs. Hamill, supra, was based upon the unconstitutionality of the Act of March 10th, 1869, by reason of its being a local private Act, and embracing more than one subject, and that not expressed in its Title.

In Unity vs. Burrage, 103 U. S., 447, October term, 1880, an Illinois case from the Southern District of Illinois, this whole question is ably discussed and many State cases considered.

On page 458, the Court say: "The Supreme Court of Illinois, in the case of the Belleville, etc., Railroad Company vs. Gregory (15 Ills., 20), has decided that 'An Act to incorporate the Belleville & Illinois Railroad Company,' and which contained a section which authorized the City of Belleville and the County of St. Clair to subscribe for stock in the Company, was not in violation of the Section of the State Constitution under consideration."

Fireman's Benevolent Association vs. Lounsbury, 21 Ill., 511.

Schuyler County vs. People, 25 Id., 181.

O'Leary vs. County of Cook, 28 Id., 534.

Erlinger vs. Boneau, 51 Id., 95.

People vs. Brislin, 80 Id., 423.

Binz vs. Weber, 81 Id., 288.

"*The Act cannot, therefore, be held to be open to the constitutional objection*," even under the State Court decisions.

In San Antonio vs. Mehaffy, 96 U. S., 315, the Court say: "This identical question arose in San Antonio vs. Lane, *supra*. It was then unanimously held by the Court that 'When an Act of the Legislature expresses in its title the object of the Act, the title embraces and expresses any lawful means to achieve the object, thus fulfilling the Constitutional injunction, that every law shall embrace but one object, and that shall be expressed in its title.'"

In Jonesboro City vs. Cairo & St. Louis Railroad Co., 100 U. S., 192, the Court held that "any provision in the title of a bill which calls attention to its subject, although in general terms, is all that is required by the Constitution." An Illinois case.

It was held by the State Supreme Court, in Johnson vs. The People, 83 Ill., 431, "That it does not require that the subject of the bill must be specifically and exactly expressed in the title; hence we conclude that any expression in the title which calls attention to the subject of the bill, al-

though in general terms, is all that is required." September term, 1876.

The case of Mount Clair vs. Ramsdell, 107 U. S., 147, is in point, where it was held: "That this provision does not require the title of an Act to set forth a detailed statement or an index or abstract of its contents; nor does it prevent uniting in the same Act numerous provisions having one general object fairly indicated by its title. 2. That the powers, however varied and extended, which the township may exercise, constitute but one object which is fairly expressed in a title showing nothing more than the legislative purpose to establish such Township. 3. The conflict between the Constitution and a Statute must be palpable to justify the judiciary in disregarding the latter upon the sole ground that it embraces more than one object, or that if there be but one, it is not sufficiently expressed in the title."

"It is only a very clear case, where the violation of the constitution is plain and palpable, that the statute will be declared unconstitutional by the Courts. If there is simply a doubt of the power of the legislature to make an enactment, that doubt will be solved in favor of the Legislature." The Supervisor, etc., vs. C., B. & Q. R. R. Co., 44 Ill., 229.

"The adjuncts and modus operandi of accomplishing the objects of the Statute need not be stated in the title. City of Ottawa vs. The People, 48 Ill., 233."

The title of the Railroad Charter involved in this case is: "*An Act to incorporate the Jacksonville & Southeastern Railway Company.*" The State Supreme Court say: "It has been

long, repeatedly and uniformly held that Counties, Cities, incorporated Towns and Townships *may be empowered by their charters or charters of railroad companies to subscribe for stock in such companies or even to make donations to aid in constructing railroads, if there is, or can be, anything settled in this Court, it is that such power could be granted and exercised under the Constitution of 1848; of this there can be no question.*" City of Virden vs. Allen, 107 Ill., 506, October term, 1883.

The same Court say further, p. 506: "It has been repeatedly held, and it is equally well settled, that when a charter to authorize the construction and operation of a railroad confers such power upon municipalities, it is germane to such charters, and does not constitute a different subject from that of power to construct the road; that it is but a means to the end, and is but a part of the whole power, and is properly conferred. The voting of stock and issuing bonds to pay for same, are most important and essential means to the end of building railroads."

Both the State and Federal Courts have held beyond a question, we think, that the Act of March 10th, 1869, incorporating the Railroad Company to which the bonds were issued was not repugnant to the Constitution of 1848 by reason of its title.

Nor is the Act of March 10, 1869, a local or private act. Section 21, of the Act, private laws of Illinois, Vol. 3, 1869, is as follows, to-wit: This Act shall be deemed a *public act and shall be liberally construed for all purposes therein expressed and declared*, and shall be in force from and after its passage.

Abbott's Law Dictionary defines a Public Act, Law or Statute, as "An enactment or statute which affects the community generally, although perhaps operating only within a limited territory, as distinguished from a private Act, which bears upon designated individuals."

Acts creating public corporations are public Statutes. Portsmouth Livery Company vs. Watson, 10 Mass., 9.

A lew relating to a particular town and published among the private laws and which in all other respects is a private law, *becomes a public law, if the Legislature have inserted therein a clause providing that it shall be deemed a public act.*

Pollock vs. McClurken, 42 Ill., 37.

An act to survey timber in a particular County is a public Statute. Pierce vs. Greenl, 54.

An act relating to the preservation of a single species of fish in a particular river is a public Act.

Bumhaum vs. Webster, 5 Mass., 266.

V.

The *State Supreme Court* in *People vs. Hamill, 134 Ill., 666, is not conclusive, and is not the law of the land, nor of the State of Illinois.* Both State and Federal Courts were not in accord with it before and are not since it was rendered June 16, 1888, as will clearly appear by the above citations.

The decisions of the State Supreme Court, as shown above have been uniformly against the decision rendered in that case.

In the case of Pana vs. Bowler, 107 U. S., 540-541, the correct doctrine is stated where that Court refused to follow

the State Court decisions—an Illinois case decided October, 1882. The Court say: "This latter proposition is one which falls among the *general principles and doctrines of commercial jurisprudence* upon which it is our duty to form an independent judgment and in respect of which we are under no obligations to follow implicitly the conclusions of any other Court, however learned or able it may be."

And again in Butz vs. City of Muscatine, 8 Wall, 575, the Court say: "Where a question involved in the construction of State Statutes practically affects those remedies of creditors which are protected by the constitution, this Court will exercise its own judgment on the meaning of the Statute, irrespectively of the decisions of State Courts, and if it deems these decisions wrong *will not follow them;* and this whether the case come here from the Circuit Court in ordinary course or from the Supreme Court of the State under the 25th Section of the Judiciary Act."

This question of following State Court decisions is fully discussed in Burgess vs. Seligman, 107 U. S., 33-34, where the Court say, "But when the law *has not been thus settled*, it is the right and duty of the Federal Courts to exercise their own judgment; *as they always do in reference to the doctrines of commercial law and general jurisprudence.*"

We admit the rule that no recital can supply the want of legal authority for the execution of the bonds, but insist that the Act of March 10th, 1869, gave plenary legislative authority for the issue of the bonds and was not repugnant

to the Constitution of 1848, and that the admitted facts averred in the declaration and the recitals on the bonds are sufficient in law for a bona-fide holder of the bonds to recover judgment thereon.

VI.

The Equities of this case are all with the Plaintiff. It would seem an anomaly in jurisprudence for the Courts to hold that *a part* of an issue of bonds issued at the same time and date, executed and delivered by the same officials, under the same Statute, on the same vote, for the same purpose and of the same tenor and effect, *should be held valid and a part void, for want of power to issue them.*

If there was any power for the legal issue of any part of the bonds, *it must exist for the whole issue.* Had all of the bonds been included in the Jackson suit they would all have been unquestionably held *valid* in the decree of June 5, 1881.

We respectfully submit that in our opinion nothing has since occurred to overthrow, diminish or annihilate the authority of the Act of March 10, 1869, under which Jackson's bonds *were held valid obligations of Hamilton County.* That Statute still exists and we invoke its authority in this case.

Moreover, it will not be denied that the County has since recognized the justice of that decree by paying Jackson's bonds in full.

All of which is respectfully submitted with the confident expectation that justice will be done these parties and

the Writ of Certiorari be issued and the questions involved in Petitioner's case be reviewed and equitably determined by this Honorable Court.

Geo. A. Dauden

Attorney for Petitioner.

For Harriet M. Zane,
Petitioner.